

IN THE HIGH COURT OF UTTARANCHAL AT AINITAL.

A.O. No. 131 of 2003

The New India Assurance Company,
Branch Manager, District Nainital
through its Divisional Manager,
Divisional Officer, Nainital Road,
Opposite Judges Court, Haldwani,
District-Nainital. Appellant

Versus

(1)Smt.Farooki Begum W/o late Sri Laik Ahmad,
(2)Nizamuddin,
(3)Jeeshan
(4)Imran
(5)Faizan
(6)Ahtishan
All sons of S/o late Sri Laik Ahmad,
All Residents of Mohalla Madeena Masjid,
Nai Basti, Jkhatari, Ram Nagar,
District-Nainital.
(7)Sri Shyam Singh S/o Sri Alam Singh,
R/o Mohalla-Teda Road, Lakhan Pur,
Ram Nagar, District-Nainital
.....Respondents.

**Sri T.A.Khan, learned counsel for the appellant,
Sri I.S.Mehra, learned counsel for the respondents 1 to 6.**

Date: 25th Aug.,2004

**Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.**

This appeal has been preferred by the Opp.party/appellant-Insurance Company against the judgment and order dated 27.03.2003 passed by Motor Accident Claims Tribunal, Nainital in Motor Accident Claim Petition No. 39 of 2002, by which the claim petition has been decreed for a sum of Rs. 5,34,000/- as compensation against the appellant alongwith interest.

2- Brief facts giving rise to this appeal are that on 10.01.1999 deceased Laik Ahmad was travelling in Truck No. UP 02-C-3874 with his goats and scraps. The said truck fell into ditch due to rash and negligent driving by its driver resulting the death of Laik Ahmad. He was engaged in his profession of meat seller. It was alleged that the deceased was 32 years of age at the time of accident. The claim petition was filed for Rs. 6,00,000/- as compensation.

3- The Opp.parties contested the claim petition before the Tribunal by filing their separate written statements. The Opp.party-owner of the Truck admitted the accident on the aforesaid date, time and place. The Opp.party No.2-Insurance Company alleged that the driver of the offending truck was not holding a valid driving licence at the time of accident. The learned Tribunal, on the pleadings of the parties, framed necessary issues and after recording evidence of the parties allowed the claim petition.

4- The learned counsel for the appellant pressed the appeal only on the ground that the learned Tribunal did not consider that the deceased was travelling in the truck in question as a gratuitous passenger and that there is no evidence that the deceased was travelling in the truck with his goats and scraps. Therefore, no compensation could be paid. We have gone through the entire material on record and perused the impugned judgment. The petitioner-Smt.Farooki Begum got herself examined before the Tribunal who stated on oath that her husband Laik Ahmad was coming to Ram Nagar in Truck No. UP 02C-3874 with his goats and scraps from village -Masi and due to rash and negligent driving of the driver of said truck, it fell into ditch in which her husband-Laik Ahmad and driver of the said truck died. The appellant did not adduce any evidence to rebut the statement on oath given by the petitioner.

Therefore, it stands established that the deceased was not travelling as a gratuitous passenger. The learned Tribunal has rightly held the Insurance Company liable to pay the compensation in view of the law laid down by the Hon'ble Apex Court in the case of ***Ramesh Kumar versus National Insurance Company Ltd. and others***, reported in ***2001 (3) Transport and Accidents Cases, 639 (Supreme Court)*** in which it has been held that compensation awarded in such cases where deceased or injured persons were travelling in a goods carriage who were owner or his authorised representative, the Insurance Company is liable to pay the compensation.

4- In our opinion, the Tribunal did not commit any error in fastening the liability to pay the compensation on the Insurance Company. Nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal.

5- The appeal has no force on merit and is dismissed. The amount of compensation, if deposited in the appeal, shall be remitted to the concerned Motor Accident Claims Tribunal.

(**B.S. Verma, J.**)

(**P.C. Verma, J.**)

25.08.2004
P.Singh